

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the matter of:

MARITIME COMMUNICATIONS/LAND MOBILE, LLC
([MCLM](#)): Participant in Auction No. 61 and Licensee of Various
Authorizations in the Wireless Radio Services; Applicant for
Modification of Various Authorizations in the Wireless Radio
Services

Applicant with ENCANA OIL AND GAS (USA., INC.;
DUQUESNE LIGHT COMPANY; DCP MIDSTREAM, LP;
JACKSON COUNTY RURAL MEMBERSHIP ELECTRIC
COOPERATIVE; PUGET SOUND ENERGY, INC.;
ENBRIDGE ENERGY COMPANY, INC.; INTERSTATE
POWER AND LIGHT COMPANY; WISCONSIN POWER
AND LIGHT COMPANY; DIXIE ELECTRIC MEMBERSHIP
CORPORATION, INC.; ATLAS PIPELINE-MID CONTINENT,
LLC; DENTON COUNTY ELECTRIC COOPERATIVE, INC.,
DBA COSERV; AND SOUTHERN CALIFORNIA REGIONAL
RAIL AUTHORITY

For Commission Consent to
Assignment of Various Authorizations
in the Wireless Radio Service

MO&O FCC 18-168
EB Docket No. 11-71
FRN: 0013587779

Application File Nos.¹
(W) 0004030479,
0004144435,
0004193028,
0004193328,
(W) 0004354053,
(W) 0004309872,
(W) 0004310060,
00043154903,
0004315013,
0004430505,
(W) 0004417199,
(W) 0004419431,
(W) 0004422320,
(W) 0004422329,
0004507921,
0004153701,
(W) 0004526264,
(W) 0004636537,
(W) 0004604962

To: Marlene H. Dortch, Secretary
Attn: The Commission and the General Counsel
Filed: On ECFS and ULS as captioned above and in FCC 18-168

SECOND FURTHER NOTICE OF CASES IN DC CIRCUIT COURT
RELATED TO MO&O FCC 18-168

Warren Havens, and
Polaris PNT PBC
Polaris PNT 1, PB LLC
Polaris PNT 2, PB LLC
Polaris PNT 3, PB LLC

2649 Benvenue Ave
Berkeley, CA 94704
Phone 510. 914 0910

February 5, 2018

¹ Some dismissed after Docket 11-71 commenced. "W" means shown as withdrawn in ULS.

On February 2, 2019 I submitted a Further Notice of Cases in DC Circuit Court Related to MO&O FCC 18-168. That attached documents in DC Cir. case 18-1343, and it noted another, related DC Cir. case 18-1339.

In this “Second Further Notice...” captioned above, I submit as attachments hereto recently filed documents in DC Cir. case 18-1339. These are not the same in some respects, including many of the issues presented to the court for review, as the attachments in the initial “Further Notice...”

I am hereby submitting the attached items on ECFS in docket 11-71 because they relate to FCC 18-168 that captions this docket, and the FCC OGC filed FCC 18-168 in this docket, and so that any person or entity who believes it had or has legal interest and standing in the matters of the attached items have further notice. (I provided initial notice in my conditional Petition for Reconsideration and other filings related to FCC 18-168.)

Respectfully submitted,



Warren Havens,
Individually



Warren Havens
President,
Polaris PNT PBC
Polaris PNT 1, PB LLC
Polaris PNT 2, PB LLC
Polaris PNT 3, PB LLC

Date and Contact information is on the Caption page.

ATTACHMENT 1

UNITED STATES COURT OF APPEALS


DISTRICT OF COLUMBIA CIRCUIT

333 Constitution Avenue, NW
 Washington, DC 20001-2866
 Phone: 202-216-7000 | Facsimile: 202-219-8530

AGENCY DOCKETING STATEMENT

Administrative Agency Review Proceedings (To be completed by appellant/petitioner)

1. CASE NO. 18-1339
2. DATE DOCKETED: 12-27-2018
3. CASE NAME (lead parties only) Warren Havens v. Federal Communications Commission
4. TYPE OF CASE: ☒ Review ☐ Appeal ☐ Enforcement ☐ Complaint ☐ Tax Court
5. IS THIS CASE REQUIRED BY STATUTE TO BE EXPEDITED? ☐ Yes ☒ No
 If YES, cite statute _____
6. CASE INFORMATION:
 - a. Identify agency whose order is to be reviewed: Federal Communications Commission
 - b. Give agency docket or order number(s): FCC 18-168
 - c. Give date(s) of order(s): 11/29/2018
 - d. Has a request for rehearing or reconsideration been filed at the agency? ☒ Yes ☐ No
 If so, when was it filled? 12/31/2018 By whom? Warren Havens, and Polaris PNT entitles
 Has the agency acted? ☐ Yes ☒ No If so, when? _____
 - e. Identify the basis of appellant's/petitioner's claim of standing. See D.C. Cir. Rule 15(c)(2):
Warren Havens is a direct subject of FCC 18-168, and is a party aggrieved under
47 U.S.C. § 402(b).
 - f. Are any other cases involving the same underlying agency order pending in this Court or any other?
☒ Yes ☐ No If YES, identify case name(s), docket number(s), and court(s)
Case no. 18-1343 in this Court.
 - g. Are any other cases, to counsel's knowledge, pending before the agency, this Court, another Circuit Court, or the Supreme Court which involve *substantially the same issues* as the instant case presents?
☒ Yes ☐ No If YES, give case name(s) and number(s) of these cases and identify court/agency:
In this Court no. 18-1343, and (see attachment hereto) no. 18-1051.
 - h. Have the parties attempted to resolve the issues in this case through arbitration, mediation, or any other alternative for dispute resolution? ☐ Yes ☐ No If YES, provide program name and participation dates.
Warren Havens filed on 12/10/2018 before the FCC a proposal to the FCC for alternative dispute
resolution under 47 C.F.R. § 1.18 and 9 U.S.C. §§ 201-208. The FCC has not yet responded.

Signature  Date 2/04/2019
 Name of Counsel for Appellant/Petitioner Warren Havens, Petitioner, pro se (not an attorney at law)
 Address 2649 Benvenue Avenue, Berkeley CA 94704
 E-Mail wrrnvns@gmail.com Phone (510) 914 - 0910 Fax ()

ATTACH A CERTIFICATE OF SERVICE

Note: If counsel for any other party believes that the information submitted is inaccurate or incomplete, counsel may so advise the Clerk within 7 calendar days by letter, with copies to all other parties, specifically referring to the challenged statement.

Attachment to Docketing Statement

Cases with related issues, in part, and a showing of the relation

Related cases: In this Court, *Mozilla v FCC*, no. 18-1051 (and its underlying FCC decisions and related court cases).

The chart below is a self-explanatory showing. The Mozilla case Issues listed are from the Joint Statement of Issues filed by the "private-sector intervenors supporting petitioners," Document #1732255, Filed 05/22/2018.

Only issues in 18-1339 that are substantially the same as those in 18-1051, by the language used, are included in the chart.

Issues in: Havens v FCC, No. 18-1339	Issues in (see above): Mozilla v FCC, No. 18-1051
4. Whether the Commission arbitrarily and capriciously reasoned, or acted with deliberate unlawful intent and effect, in applying the cited broad-powers rules, changed by its interpretations and avoidance, to support the decisions made and not made, after years of review, in the subject radio services and licenses permitting innovative wireless for nationwide high-public-interest “intelligent” infrastructure and services.	1. Whether the Commission arbitrarily and capriciously reasoned that the transparency rule is the only FCC rule needed to protect an open internet and online innovation.
5. Whether the Commission’s failure to undertake and show in the decisions made, the costs of these changed and avoided rules to the subject nationwide radio services (most all auction-based wireless services under 47 U.S.C. §309(j)) and applications, outweighed the benefits.	2. Whether the Commission reasonably concluded that the costs of the eliminated open internet rules outweighed their benefits.
6. Whether, in reversing the previous Commission’s positions with regard to these rules, by some interpretive changes and by some abandonment, and by applying these changed rules, the FCC (i) exceeded its authority in the relevant Communications Act	3. Whether, in reversing the previous Commission’s positions with regard to these rules, the FCC failed to provide the “detailed justification” and “reasoned analysis” that the

statutes, and (ii) failed to provide the “detailed justification” and “reasoned analysis” that the Supreme Court, in <i>FCC v. Fox Television Stations, Inc.</i> , 556 U.S. 502 (2009), requires for the agency to change course, because the FCC relied on unsupported factual conclusions that contradict those of its previous order.	Supreme Court, in <i>FCC v. Fox Television Stations, Inc.</i> , 556 U.S. 502 (2009), requires for an agency to change course, because the FCC relied on unsupported factual conclusions that contradict those of its previous order.
7. Whether these FCC decisions on and application of these rules was supported by substantial evidence on the record.	4. Whether the Commission’s decision to eliminate open internet rules was supported by substantial evidence on the record.
8. Whether the FCC provided sufficient notice and relied on sufficient statutory authority in these decisions on and application of changed these rules	5. Whether the FCC provided sufficient notice and relied on sufficient statutory authority in adopting the transparency rule.
9. Whether, in these decisions on and application of these rules, the FCC failed to exercise its exclusive authority delegated by Congress and rights of federal preemption rights over State interests, under the Supremacy Clause in the U.S. Constitution, that the Supreme Court established in many decisions including <i>City of New York v. FCC</i> , 486 U.S. 57 (1988) (e.g., at p. 64, “The	[See footnote. ¹]

¹ In the *Mozilla v FCC* Petition for Review in Case 2018-1051, Document #1719109 filed 02/22/2018, the subject FCC Order, FCC 17-166 is attached. In FCC 17-166, at the following pages of Document #1719109, “preempt” or “preemption” (as to the described State laws and State agency authority) is used approximately 30 times at pages 40, 42, 3, 44, 45, 59. It reads as a substantial justification of the Commission for its decisions in FCC 17-166. Proper or improper assertion of FCC preemption, or failure to properly assert preemption but accommodation of a type of reverse preemption, regarding new innovative nationwide communication-information services, are core issues in both this case *Havens v. FCC* and in *Mozilla v FCC*.

<p>statutorily authorized regulations of an agency will pre-empt any state or local law that conflicts with such regulations or frustrates the purposes thereof."), and instead engaged in a type of reverse preemption, including because it actively supported and ruled in deference to asserted State law interests at the expense of the purposes and requirements of the applicable federal law: the relevant sections of the Communications Act and related actual FCC rules. And whether these FCC actions violated 31 U.S. Code § 1342 - Limitation on voluntary services.</p>	
<p>10. Whether, in these FCC decisions and actions, the FCC acted unlawfully to chill and undermine the repeated (for over two decades) the “whistleblowing” actions of Petitioner and others before the FCC, and in other legal forums, and their underlying rights under the First Amendment to the U.S. Constitution, and the purposes of and rights under the 31 U.S. Code § 3729 - the Federal False Claims Act.</p>	

End Note

From: An Introduction to Judicial Review of Federal Agency Action, Congressional Research Service, 7-5700, R44699 (December 2016), at p. 5 (underlining added):

There are other, less common bases for challenges to agency actions. In very limited situations, even lacking an express statutory cause of action, individuals may seek “nonstatutory” review of a agency action that is “ultra vires.”^{48/}

48/ *Commonwealth of Puerto Rico v. United States*, 490 F.3d 50, 59 (1st Cir. 2007) (“The basic premise behind nonstatutory review is that, even after the passage of the APA, some residuum of power remains with the district court

to review agency action that is ultra vires.”) (quoting *R.I. Dep’t of Env’tl. Mgmt. v. United States*, 304 F.3d 31, 44 (1st Cir. 2002)); *R.I. Dep’t of Env’tl. Mgmt.*, 304 F.3d at 42 (“As a general matter, there is no statute expressly creating a cause of action against federal officers for constitutional or federal statutory violations. Nevertheless, our courts have long recognized that federal officers may be sued in their official capacity for prospective injunctive relief to prevent ongoing or future infringements of federal rights. Such actions are based on the grant of general federal-question jurisdiction under 28 U.S.C. §1331 and the inherent equity powers of the federal courts.”) (citations omitted); *Chamber of Commerce v. Reich*, 74 F.3d 1322, 1327 (D.C. Cir. 1996) (“If a plaintiff is unable to bring his case predicated on either a specific or a general statutory review provision, he may still be able to institute a non-statutory review action.”).

See also, in Petitioner’s Initial Submissions statement submitted herewith, under issues 11 to 17, the descriptions of cited U.S. Supreme Court decisions that pertain to the alleged FCC ultra vires action, and the rights so seek review of these, including under the “collateral-claim exception.”

An essential issue and aspect of this appeals court case is my challenge that the subject FCC order, FCC 18-168 (and most of its underlying FCC orders, and non-FCC legal actions cited to) are ultra vires, outside FCC staff and Commissioner authority under the Communications Act (47 USC §151 et seq.), the 1996 Telecom Reform Act, and the FCC’s own regulations, interpretive law, and case precedents including those of this Court.

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

[X] No. 18-1339

[] No. 18-1343

CERTIFICATE OF SERVICE

I, the undersigned, certify that, on this 4th day of February 2019, the foregoing or enclosed document(s) --

PETITIONER'S AGENCY DOCKETING STATEMENT FORM

-- were filed through this Court's CM/ECF system, which will send a notice of the filing(s) to all registered users who are parties in this case, listed below; any others listed below will be served by U.S. Mail, first-class mail, postage prepaid.

FEDERAL COMMUNICATIONS COMMISSION

Thomas M. Johnson, Jr.

General Counsel

Federal Communications Commission

45 12th Street, S.W.

Washington, D.C. 20554

Thomas.Johnson@fcc.gov

and LitigationNotice@fcc.gov (47 CFR 1.31(b))

UNITED STATES OF AMERICA

Matthew G. Whitaker

Acting Attorney General

U.S. Department of Justice

Civil Division, Appellate Staff

950 Pennsylvania Avenue, N.W.

Washington, D.C. 20530-000 1



Warren Havens

2649 Benvenue Ave., Berkeley CA 94704

ATTACHMENT 2

PETITIONER'S INITIAL SUBMISSIONS

Case no. 18-1339. Petition for Review of FCC Order FCC 18-168

Petitioner respectfully submits the following. The following is provisional to the extent permitted. It is accurate as of this time as Petitioner can ascertain.

CONTENTS. (1) Docketing Statement Form, Including Related Cases and Cases with Some Related Issues. (2) Certificate as to Parties, (3) Statement of Issues, (4) Underlying Decision (Ruling). (5) Deferred Joint Appendix Statement.

(1) DOCKETING STATEMENT FORM, INCLUDING RELATED CASES AND CASES WITH SOME RELATED ISSUES. This is submitted herewith, along with an attachment regarding a case with some substantially related issues pending in this Court.

(2) CERTIFICATE AS TO PARTIES

Petitioner is Warren Havens, an individual, identified in the Docketing Statement and the Petition for Review. He is currently pro se in this appeals court case. He is not an attorney at law but is an experienced layman in legal procedures and law, including in federal appeals courts.

Respondents are the Federal Communications Commission (FCC) and the United States of America.

Regarding Others. Other than Petitioner, no other party has timely filed before the FCC (or to Petitioners knowledge this Court or any other court) any

filing seeking to challenge any aspect of the subject FCC Order, FCC 18-168, and the time for a timely challenge has passed, to the knowledge of Petitioner, including under 47 U.S.C. §405 as to a petition for reconsideration before the FCC. Thus, Petitioner believes that there are no other parties that have established interest and standing to take part in this appeal case.

In this regard, caption of the subject Order, FCC 18-168, lists various companies that were parties in the FCC proceeding under docket 11-71: some of these remained in the proceeding until it was terminated in year 2017. Petitioner challenged the termination, and the subject Order FCC 18-168 in part deals with that challenge, and I challenge this aspect of FCC 18-168 among other aspects. Thus, there may be other parties, some of these companies or their affiliates that may be affected by the results of this appeals court case, 18-1339, even if they have not taken action to establish or maintain legal interest and standing.

(3) STATEMENT OF ISSUES

Petitioner may consolidate the following in briefing.

Also, the first 10 Issues below are materially the same as those the Petitioner submitted as Appellant in case 18-1343 in this Court on February 1, 2019. The instant case 18-1339 is related to case 18-1343 as stated in the docketing statement forms for the two cases. The issues below after the first ten materially overlap the first ten but focus on issue descriptions under cited holdings of the U.S. Supreme

Court.

Herein, the “Decision” means the FCC decisions, rulings and orders in FCC 18-168 and its underlying decisions and actions, and the “Commission” and the “FCC” each mean the full Commission and all of its delegated authorities.

1. Whether the Commission and its delegated authorities (together, the “FCC”) should be barred from undertaking the “inquiry” described in the Decision, FCC 18-168, into the basic qualifications of a person, the Petitioner here, to hold or control future commercial FCC licenses, where he holds no current licenses or license applications.
- 2a. Whether the Commission’s Decision and its parts involving future actions, including a vague “inquiry,” was time barred since the Decision was long past the deadline for imposing any forfeiture, that should precede issues in the inquiry, and since the Decision was made in excess of order of magnitude longer time than permitted in the relevant statute, 47 U.S.C. §405, under guidance from the US Supreme Court.
- 2b. Whether the Commission, by the Decision, violated, and was time barred to issue the Decision for violating, 5 U.S.C. § 555 of the Administrative Procedure Act that requires that “[p]rompt notice shall be given of the denial in whole or in part of a written application, petition, or other request of an interested person made in connection with any agency proceeding.”

3. Whether the record and issues in this action warrant transfer to a United States District Court under 28 U.S. Code §§ 2347, 1631, 158(a) or other basis. See [End Note](#) below.
4. Whether the Commission arbitrarily and capriciously reasoned, or acted with deliberate unlawful intent and effect, in applying the cited broad-powers rules, changed by its interpretations and avoidance, to support the decisions made and not made by the Decision, after years of review, in the subject radio services and licenses permitting innovative wireless for nationwide high-public-interest “intelligent” infrastructure and services.
5. Whether the Commission’s failure to undertake and show in the decisions made by the Decision, the costs of these changed and avoided rules to the subject nationwide radio services (most all auction-based wireless services under 47 U.S.C. §309(j)) and applications, outweighed the benefits.
6. Whether, in reversing the previous Commission’s positions with regard to these rules, by some interpretive changes and by some abandonment, and by applying these changed rules, the FCC (i) exceeded its authority in the relevant Communications Act statutes, and (ii) failed to provide the “detailed justification” and “reasoned analysis” that the Supreme Court, in *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502 (2009), requires for the agency to change course, because the FCC relied on unsupported factual

conclusions that contradict those of its previous order.

7. Whether these FCC decisions on and application of these rules was supported by substantial evidence on the record.
8. Whether the FCC provided sufficient notice and relied on sufficient statutory authority in these decisions on and application of changed these rules.
9. Whether, in these decisions on and application of these rules, the FCC failed to exercise its exclusive authority delegated by Congress and rights of federal preemption rights over State interests, under the Supremacy Clause in the U.S. Constitution, that the Supreme Court established in many decisions including *City of New York v. FCC*, 486 U.S. 57 (1988) (e.g., at p. 64, "The statutorily authorized regulations of an agency will pre-empt any state or local law that conflicts with such regulations or frustrates the purposes thereof."), and instead engaged in a type of reverse preemption, including because it actively supported and ruled in deference to asserted State law interests at the expense of the purposes and requirements of the applicable federal law: the relevant sections of the Communications Act and related actual FCC rules. And whether these

FCC actions violated 31 U.S. Code § 1342 - Limitation on voluntary services.

10. Whether, in these FCC decisions and actions, the FCC acted unlawfully to chill and undermine the repeated (for over two decades) the “whistleblowing” actions of Petitioner and others before the FCC, and in other legal forums, and their underlying rights under the First Amendment to the U.S. Constitution, and the purposes of and rights under the 31 U.S. Code § 3729 - the Federal False Claims Act.
11. Whether, under claims of Petitioner and affiliates, the FCC, by the Decision (1) violates rights to procedural due process, (2) infringes substantive due-process rights, (3) establishes an "ultra vires" cause of action, and/ or (4) entitles a "preservation of rights" injunction under the Administrative Procedure Act, 5 U.S.C. §§ 704 – 05, for which review by this court is proper under U.S. Supreme Court holdings including *Mathews v. Eldridge*, 424 U.S. 319, 326–32 (1976). See also *Ill. Council*, 529 U.S. at 19, 120 S.Ct. 1084. This involves the collateral-claim exception, first articulated in *Eldridge* (above).
12. Whether, as Petitioner asserts under the above and below case law, and given the facts underling these numbered issues or claims, "finality" at the FCC is waived, deemed exhausted, or not relevant, notwithstanding that

Petitioner has timely submitted before the FCC a petition for reconsideration (see accompanying docketing statement form) of aspects of the Decision, as the U.S. Supreme Court held in *Eldridge* (above) (as discussed in *Family Rehab., Inc. v. Azar*, 886 F.3d 496, 501 [5th Cir., 2018]), and *Bowen v. City of New York*, 476 U.S. 467 (1986).

13. Whether the FCC, by aspects of the Decision, including its ordered undefined future "inquiry," "adopted unlawful, unpublished policy" which resulted in wrongful denials of rights and benefits and violated due process of law, as the U.S. Supreme Court held in *Bowen* (above) at 476 U.S. at 473–74.
14. Whether the FCC, by the Decision, caused to Petitioner "damage in a way not recompensable through retroactive" relief, as the U.S. Supreme Court held in *Eldridge* (above), 424 U.S. at 331.
15. Whether the FCC, by the Decision, including its undefined future "inquiry" on some matters the FCC decided years earlier, and on other matters the FCC has had under review for over 1,300 days still with no decision (and over 1,200 days past the statutory deadline) the "Government seeks to require claimants [Petitioner and affiliates] to exhaust administrative remedies merely to enable them to receive the [rights] they should have been

afforded in the first place," as the U.S. Supreme Court held in *Bowen* (above), 476 U.S. at 484.

16. Whether channeling further review of the Decision through the FCC "would not simply channel review through the agency, but would mean no review at all," as the U.S. Supreme Court held in *Shalala v Illinois Council*, 529 U.S. 1, 120 S.Ct. 1084 (2000) and that further FCC review of some of Petitioner's claims would either be a "a legal impossibility" or Petitioner would face "a serious practical roadblock to having [its] claims reviewed in any capacity, administratively or judicially." *Physician Hosps.*, 691 F.3d at 655, 659 (internal quotations omitted).
17. Whether the FCC, by the Decision, caused Petitioner and affiliates deprivation of "the principle that under the Due Process Clause an individual must be given an opportunity for a hearing before he is deprived of any significant property interest, as the U.S. Supreme Court held in *Cleveland Board of Education v. Loudermill Parma*, 470 U.S. 532 (1985).

End Note

From: "An Introduction to Judicial Review of Federal Agency Action," Congressional Research Service, 7-5700, R44699 (December 2016), at p. 5 (underlining added):

There are other, less common bases for challenges to agency actions. In very limited situations, even lacking an express statutory cause of action, individuals may seek "nonstatutory" review of a agency action that is "ultra vires."48/

48/ *Commonwealth of Puerto Rico v. United States*, 490 F.3d 50, 59 (1st Cir. 2007) (“The basic premise behind nonstatutory review is that, even after the passage of the APA, some residuum of power remains with the district court to review agency action that is ultra vires.”) (quoting *R.I. Dep’t of Env’tl. Mgmt. v. United States*, 304 F.3d 31, 44 (1st Cir. 2002)); *R.I. Dep’t of Env’tl. Mgmt.*, 304 F.3d at 42 (“As a general matter, there is no statute expressly creating a cause of action against federal officers for constitutional or federal statutory violations. Nevertheless, our courts have long recognized that federal officers may be sued in their official capacity for prospective injunctive relief to prevent ongoing or future infringements of federal rights. Such actions are based on the grant of general federal-question jurisdiction under 28 U.S.C. §1331 and the inherent equity powers of the federal courts.”) (citations omitted); *Chamber of Commerce v. Reich*, 74 F.3d 1322, 1327 (D.C. Cir. 1996) (“If a plaintiff is unable to bring his case predicated on either a specific or a general statutory review provision, he may still be able to institute a non-statutory review action.”).

See also the descriptions of cited U.S. Supreme Court decisions in issues 11-17 above that pertain to the alleged FCC *ultra vires* action, and rights so seek review of these, including under the “collateral-claim exception.”

An essential issue and aspect of this appeals court case is my challenge that the subject FCC order, FCC 18-168 (and most of its underlying FCC orders, and non-FCC legal actions cited to) are ultra vires, outside FCC staff and Commissioner authority under the Communications Act (47 USC §151 et seq.), the 1996 Telecom Reform Act, and the FCC’s own regulations, interpretive law, and case precedents including those of this Court.

(4) UNDERLYING DECISION (RULING). The underling decision is the FCC Order, FCC 18-168 which was submitted with the Petition for Review.

(5) DEFERRED JOINT APPENDIX STATEMENT. Petitioner plans to use a deferred Appendix, to the full extent that is available and permitted.

Respectfully submitted, February 4, 2019,

/s/ *

Warren Havens
2649 Benvenue Ave
Berkeley CA 94704
Phone 510 914 0910

* Filed by and signed under ECF.

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

[X] No. 18-1339

[] No. 18-1343

CERTIFICATE OF SERVICE

I, the undersigned, certify that, on this 4th day of February 2019, the foregoing or enclosed document(s) --

PETITIONER'S INITIAL SUBMISSIONS

-- were filed through this Court's CM/ECF system, which will send a notice of the filing(s) to all registered users who are parties in this case, listed below; any others listed below will be served by U.S. Mail, first-class mail, postage prepaid.

FEDERAL COMMUNICATIONS COMMISSION

Thomas M. Johnson, Jr.

General Counsel

Federal Communications Commission

45 12th Street, S.W.

Washington, D.C. 20554

Thomas.Johnson@fcc.gov

and LitigationNotice@fcc.gov (47 CFR 1.31(b))

UNITED STATES OF AMERICA

Matthew G. Whitaker

Acting Attorney General

U.S. Department of Justice

Civil Division, Appellate Staff

950 Pennsylvania Avenue, N.W.

Washington, D.C. 20530-000 1



Warren Havens

2649 Benvenue Ave., Berkeley CA 94704

CERTIFICATE OF SERVICE

I, Warren C. Havens, certify that I have, on **February 5, 2019**:

(1) Caused to be served the foregoing filing to the following persons,^{2/}by filing it in ECFS in docket 11-71^{3/} as described in the caption page above, and by the emails listed below to those persons:

David Senzel, and FCC OCC
Email to: David.Senzel@fcc.gov
LitigationNotice@fcc.gov

Jane Hinckley Halprin⁴
Chief Administrative Law Judge
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

“Separate Team” lead ^{5/}
FCC Enforcement Bureau
445 12th Street, SW
Washington, D.C. 20554

Robert J. Keller, Law Offices
P.O. Box 33428
Washington, DC 20033-0428
(Counsel to Maritime, DIP)

Wilkinson Barker Knauer, LLP
ATTN Mary N. O'Connor
1800 M Street, NW, Suite 800N
Washington, DC 20036
(Counsel to Choctaw)

Jeffrey L. Sheldon
Levine, Blaszak, Block & Boothby, LLP
2001 L Street, NW, Suite 900
Washington, D.C. 20036
(Counsel for Puget Sound Energy, Inc.)

Jack Richards, A. J. Catalano, W. Wright
Keller & Heckman LLP
1001 G Street, NW, Suite 500 West
Washington, D.C. 20001
(Counsel to Enbridge; Dixie Electric; EnCana;
Jackson Co. RMEC; DCP Midstream; Atlas)

Charles A. Zdebski, Gerit F. Hull
Eckert Seamans Cherin & Mellott, LLC
1717 Pennsylvania Avenue, NW
Washington, D.C. 20006
(Counsel for Duquesne Light)

Matthew J. Plache
5425 Wisconsin Avenue, NW
Suite 600, PMB 643
Chevy Chase, MD 20815
(Counsel for Pinnacle Wireless)

Paul J. Feldman, Harry F. Cole
Fletcher, Heald & Hildreth, P.L.C.
1300 N. 17th Street, 11th Floor
Arlington, VA 22209
(Counsel, So. Cal. Regional Rail Authority)

Arnold Leong
Abe Pacific Heights, & Hippy and Happy, LLCs
3111 Green River Drive
Reno, NV 89503
(Real party in interest and de facto control in
Receivership of the “SkyTel” entities in 11-71)

(2) Caused to be filed the foregoing filing as stated on the caption page, and thus, as I have been instructed (see footnote below) provide notice and service to any party that has or may seek to participate in Dockets 13-85 and 11-71. (3) Caused to be emailed the this filing to: David Hunt, Inspector General, David.hunt@fcc.gov; and Christopher.shields@fcc.gov.

/s/ Warren Havens

^{2/} Petitioner does not believe other persons are parties in matters under the Order (and no person has informed me otherwise) and some listed above may not be or represent listed parties regarding the Order.

^{3/} Earlier, the FCC Office of General Counsel instructed me of acceptable filings and service in this fashion.

^{4/} On December 1, 2018, replaced ALJ Richard Sippel.

^{5/} A “separate team” for the inquiry described but not identified in the Order FCC 18-168.